Law Office of Jack Silver

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Via Certified Mail –
Return Receipt Requested

JUL 16 2018

July 11, 2018

Ms. Jan Coppinger, Administrator
Mr. Scott Harter, Deputy Administrator
Lake County Special Districts Administration
230 North Main Street
Lakeport, CA 95453

Board of Directors
Lake County Sanitation District
230 North Main Street
Lakeport, CA 95453

Board of Supervisors
County of Lake
255 North Forbes Street
Lakeport, CA 95453

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Ms. Coppinger, Mr. Harter, and Members of the Boards:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"; 33 U.S.C. § 1251 *et seq.*) that River Watch alleges are occurring through the operation of the sewage collection systems owned and/or operated by Lake County Sanitation District - managed and staffed by Lake County Special Districts Administration, a department of the County of Lake. The County of Lake Board of Supervisors sits as the Board of Directors for Lake County Sanitation District.

River Watch hereby places Lake County Sanitation District, Lake County Special District Administration, and the County of Lake, collectively hereafter referred to as "the District" on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch

will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the District for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Central Valley Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of sewage from the District's sewer pipelines to Clear Lake[1], Cache Creek[2], Kelsey Creek, Molseworth Creek, and Siegler Creek - all waters of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the District violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a) 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the District's operations in the region at issue in this Notice is the Regional Water Quality Control Board, Central Valley Region ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the District with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

River Watch has identified discharges of sewage from the District's sewage collection

[1] Clear Lake is impaired for mercury and nutrients under CWA § 303(d).
[2] Cache Creek (Lower, Clear Lake Dam to Cache Creek Settling Basin near Yolo Bypass), is impaired for boron, mercury, and toxicity under CWA § 303(d).

systems to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a), which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful." The District has no NPDES permit allowing it to lawfully discharge pollutants to jurisdictional waters.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from June 26, 2013, to June 26, 2018, the District has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Collection System Surface Discharges Caused By Sanitary Sewer Overflows

The District is responsible for five (5) wastewater collection systems: Southeast Regional, which conveys wastewater to the Southeast Regional Wastewater Treatment Facility; Northwest Regional, which flows to the Northwest Regional Wastewater Treatment Facility; Middletown, flowing to the Middletown Treatment Plant; Assessment Districts 9-1 and 9-3, which flow to the City of Lakeport's Wastewater Treatment Facility; and Kelseyville, which flows to the Kelseyville County Waterworks District No. 3 Wastewater Treatment Facility.

Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the collection system prior to reaching a wastewater treatment plant, are alleged to have occurred both on the dates identified in the California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports and on dates when no reports were filed by the District, all in violation of the CWA. The CIWQS "Spill Public Report – Summary Page" identifies **43**[3] "Total Number of SSO locations," with **493,114** gallons total volume of SSOs. Of this total volume, the District admits at least **449,253** gallons, or 91% of the total, reached a surface water, impacting waterways and posing both a nuisance pursuant to California Water Code §13050(m) and an imminent and substantial endangerment to health and the environment.

The below listed violations are reported by the RWQCB, and evidenced by the CIWQS SSO Reporting Program Database Records.

> **13** - SSOs reported as reaching a water of the United States, as evidenced in CIWQS and in the records of the District. As listed in CIWQS the event IDs of those violations are: 811175, 811383[4], 812825, 821322, 831500[5], 832070, 832905, and 833128[6].

All of these discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a) in that they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act.

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[3] Some SSOs had multiple spill appearance points. In addition to those listed below, event ID 811664 and ID 821925 each had two spill appearance points.
[4] Event ID 811383 had three spill appearance points.
[5] Event ID 831500 had two spill appearance points.
[6] Event ID 833128 had three spill appearance points.

Releases Reported. The District's aging collection systems have historically experienced high Inflow and Infiltration ("I/I") during wet weather, when Clear Lake is particularly prone to flooding. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains connected to adjacent surface waters such as Clear Lake, Cache Creek, Kelsey Creek, Molseworth Creek, and Siegler Creek.

As stated above and as recorded in CIWQS Public SSO Reports, the District's collection systems have experienced at least 43 SSOs between June 26, 2013 and March 6, 2017, with a combined volume of at least 493,114 gallons - 449,253 gallons of which were reported as having reached surface waters. As an example, on January 8, 2017, a significant spill occurred from two manholes in front of 6820 Meadowbrook Drive (Event ID# 831500), part of the Southeast Regional Collection System. The total reported spill volume was 46,950 gallons of raw sewage which flowed into Cache Creek via a drainage ditch. A gravity main line failed during a storm which overwhelmed the collection system with I/I. On February 18, 2017 (Event ID# 832905), a spill began which resulted in an estimated 4,200 gallons of sewage spilled from the Southeast Regional Collection System at 13433 Lakeshore Drive, approximately 60 feet west of Clear Lake. At least 1,200 gallons reached the Lake as flow exceeded the capacity of the collection system amid a storm. In another instance of flow exceeding capacity during storm events, a sewage spill from the Northwest Regional Collection System (Event ID# 833128), began on February 21, 2017, originating at 4070 Lakeshore Boulevard. The spill continued over the next five (5) days, also appearing at 4020 and 4420 Lakeshore Boulevard - all on the edges of Clear Lake. Of the 378,000 gallons of sewage spilled, 368,000 gallons were reported to have reached Clear Lake.

River Watch acknowledges the District's staff faces difficult times during intense storms, yet believes it is essential for all collection systems to be able to handle extreme weather without discharging toxic sewage into the environment.

Discharges to Surface Waters. River Watch's expert believes the District failed to report the total number and full volume of SSOs which occurred during storm events. The District acknowledged on various occasions that the collection systems were inundated with I/I during storms yet has not reported multiple SSOs on those days. While most of the District's SSO reports contain adequate information to support estimates of flow duration and volume, according to the CIWQS report of the previously mentioned spill on February 21, 2017, Event ID# 833128, the spill start time and District notification time are both 13:51, yet the report also states the spill originally appeared at approximately 13:45. However, the more detailed technical report submitted to the RWQCB states, "Lake County Special Districts was notified of an unknown leak at 4070 Lakeshore Boulevard by a customer at 4065 Lakeshore Boulevard via a phone call to the administration office at 13:33 on 2/21/2017. The phone call was completed and field staff was assigned to investigate at 13:39 arriving on site at 13:55." Another SSO mentioned earlier, Event ID # 831500, is reported to have begun at 10:30 am on January 8th, 2017. The Field Operations Spill Detail Report explains that the start time was estimated by notification from an answering service, and that the spill was discovered at 10:37 am, a few minutes before the District was notified. However, studies have shown that most SSOs are noticed significantly after they have

begun. While the District appears to be reporting with reasonable accuracy for most of the spills, with the exception of spills during storm events, there are some questionable estimates as noted above. The vast majority of SSO reports do not have accompanying technical reports.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the instances of estimating a later than actual start time and not reporting multiple SSOs during storm events leads to an underestimation of both the duration and the volume of SSOs. River Watch believes the District is not fully complying with its legal obligation to report every spill to the CIWQS SSO public reporting system.

Mitigating Impacts. River Watch contends the District fails to adequately mitigate the impacts of SSOs. The District is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's "*Report to Congress on the Impacts of SSOs*" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances.

Numerous critical habitat areas exist within areas of the District's SSOs. Clear Lake provides critical habitat for a great many fish and wildlife species, both resident and migratory. There is no record of the District performing any analysis of the impact of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the District to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. As the District is in some instances underestimating, and sometimes not reporting all SSOs which reach surface waters, River Watch contends the District is not sampling enough of its SSOs, and thereby under-stating the potential impact on critical habitat of endangered species.

B. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is also a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system results in discharges to adjacent surface waters via underground hydrological connections.

River Watch contends that untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the District's collection systems into groundwater hydrologically connected to surface waters including, but not limited to, Clear Lake, Cache Creek, Kelsey Creek, Molseworth Creek, and Siegler Creek. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection systems pose a substantial threat to

public health. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, and video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens, and other human markers such as caffeine.

C. Impacts to Beneficial Uses

The ecosystems in, around, and flowing from Clear Lake via Cache Creek support a tremendous diversity of life. Clear Lake and Cache Creek have many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching these waters or their tributaries cause prohibited pollution by unreasonably affecting these beneficial uses.

Clear Lake is an ancient, warm, nutrient rich lake which sustains an incredible array of fish, wildlife, and plants. Considered the oldest lake in North America and the largest entirely within California, Clear Lake is approximately 480,000 years old, far older than a lake's usual 10,000 year lifespan. Lakes have existed in this region for almost 2.5 million years, over molten rock from ancient, dormant volcanoes. Clear Lake's 68 square miles of surface area are divided into three arms, Upper Arm, Oaks Arm, and Lower Arm. The Upper Arm, between Lakeport and Lucerne, is the oldest and largest part of the lake.

Clear Lake and its borders support various habitats including natural wetlands, orchards, mudflats, and riparian, evergreen, deciduous, and mixed forestland. Designated an Important Bird Area by the California Audubon Society, it is a breeding ground for many riparian and wetland birds including the bald eagle, listed as endangered by the State of California. Among the many species of fish and wildlife which reside in and around Clear Lake and are currently listed as species of special concern by the State of California, are the Clear Lake Tule perch, Clear Lake Russian River roach, Sacramento perch, and American white pelican.

Known as the "bass capital of the West", Clear Lake contains the most fish per acre of any lake in North America. Yet not all fish species are plentiful. The Clear Lake hitch was once abundant in the lake and its tributaries, and is now a species of special concern, listed as threatened in the California Endangered Species Act. Much of its spawning habitat has been lost to habitat degradation, migration barriers, predation from introduced fish, and pollutants. For generations the Clear Lake hitch has been central to the culture of the area's native Pomo dwellers, and central to the ecosystem and food chain Clear Lake.

Unfortunately, Clear Lake is also home to photosynthetic bacteria called cyanobacteria. Ubiquitous in nature, these microorganisms are capable of producing beneficial compounds through their metabolism, such as biofuels and antimicrobial substances. However, they also can be highly detrimental to freshwater ecosystems, especially when blooming in excess. Cyanobacteria occur naturally in Clear Lake, typically blooming between April and November. Yet in recent years, the blooms have greatly increased in magnitude. There are various reasons for this, including warming temperatures, as well as excessive nutrients, such as nitrogen and

phosphorus, being added to an already nutrient rich environment. Cyanobacteria can do much more damage than causing unsightly blooms. Some species produce toxins that can affect humans, fish, wildlife, and pets in various detrimental ways. Inflammation, skin irritations or blisters, kidney damage, liver disease, serious neurodegenerative diseases, and even death, are potential consequences of exposure to the types of cyanobacteria which give off toxins as their secondary metabolites. At least four species capable of producing toxins have been identified in Clear Lake: *Mycrocystis aeruginosa, Aphanizomenon flos-aquae, Anabaena lemmermanii,* and *Synechococcus*. Exposure pathways include ingestion, inhalation, and skin contact. Wildlife and pets are especially vulnerable as they are likely to drink water from the Lake and lick their fur after swimming. Clear Lake is used for swimming and water sports and is also the source of drinking water for over 45,000 people with 16 municipal water agencies drawing water from the Lake. Cyanobacteria has the potential to contaminate drinking water, requiring more chemicals to be added, and to do damage to the filtration systems used in water treatment.

It has been repeatedly determined that excess phosphorus is a primary accelerator of Clear Lake's nuisance, potentially toxic, cyanobacteria blooms. The impact of nutrients in aggravating nuisance algae blooms that impair Clear Lake's beneficial uses is also acknowledged in the Basin Plan, which states, "Nuisance algae blooms impair beneficial uses in Clear Lake, which is a violation of the narrative basin plan objective that states "water shall not contain biostimulatory substances which promote aquatic growths in concentrations that cause nuisance or adversely affect beneficial uses". Under CWA § 303(d), Clear Lake is impaired for mercury and nutrients.

The Basin Plan lists the existing beneficial uses of Clear Lake as municipal and domestic supply, agricultural supply (irrigation and stock watering), water contact and non-contact recreation, warm freshwater habitat, warm water spawning, wildlife habitat, and commercial and sport fishing. Cold freshwater habitat is a potential beneficial use. Additional existing beneficial uses for some parts of Clear Lake are shellfish harvesting (Mud Slough, north, and Salt Slough), and preservation of biological habitats of special significance (Salt Slough and Wetland Water Supply Channels).

Among River Watch's serious concerns are the impacts of additional nutrients present in human waste, such as phosphorus and nitrogen, in increasing cyanobacteria blooms in an already burdened lake depended upon by many species, human as well as non-human.

Cache Creek originates from the southeast end of Clear Lake and is the Lake's only outlet. From Clear Lake, Cache Creek flows eastward, winding north, then south, through the Cache Creek Wilderness Area and Cache Creek Wildlife Area, into Colusa and Yolo Counties, and then to the Cache Creek Settling Basin northeast of Woodland. There the Creek deposits sediment and then releases water to the Yolo Bypass, and then to the Sacramento River. Cache Creek is a popular destination for various activities including white water rafting, bird watching, and fishing. The Creek supports many species of fish and is considered among the best native fisheries west of Yosemite Valley. The Cache Creek Wilderness Area, located within the County of Lake, is home to a year-round population of the American Bald Eagle as well as Tule Elk - a subspecies of elk native to California. As stated in the Basin Plan, the beneficial uses of Cache Creek from Clear Lake to the Yolo Bypass are municipal and domestic supply, agricultural supply (irrigation and stock watering), industrial process and service supply, water contact recreation, canoeing and

rafting, non-contact recreation, warm freshwater habitat, warm and cold water spawning, wildlife habitat, and commercial and sport fishing. Cold freshwater habitat is a potential beneficial use. From the Clear Lake Dam to the Settling Basin, Cache Creek is impaired for boron, mercury, and toxicity under CWA § 303(d).

The introduction of human waste, via spills, exfiltration, storm drains, and SSOs, negatively effects countless species. River Watch is understandably concerned regarding the effects of surface, underground, and unreported SSOs on critical habitat in and around the diverse and sensitive ecosystems of Clear Lake, its tributaries, and Cache Creek, including risks to species with declining populations, and the health of all who recreate in, and consume water or fish from, those ecosystems.

3. The Person or Persons Responsible for the Alleged Violation

The entities responsible for the alleged violations identified in this Notice are Lake County Sanitation District, part of the Lake County Special Districts Administration, the County of Lake, and those of their employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the District which relate to its sewage collection systems as further described in this Notice.

The County of Lake, named for Clear Lake, is located in northern California, slightly inland from the Pacific Ocean. Formed in 1861 from portions of Mendocino and Napa counties, it is bounded to the west and northwest by Mendocino County, to the north and northeast by Glenn County, Colusa County to the east, Yolo County to the southeast, Napa to the south and Sonoma to the southwest. The total area of the County is 1,329 square miles, of which 1,256 square miles is land and 72 square miles is water.

Wastewater collection and treatment services within the County of Lake are provided by multiple agencies. Some rural areas not served by sanitary sewer systems use private or community septic systems.

Lake County Sanitation District provides drinking water and wastewater services. The District provides wastewater collection, transfer, and treatment for many of the homes, businesses, and parks along the borders of Clear Lake, as well as Middletown, approximately 12 miles south. The District's service area includes areas north and northwest of the City of Lakeport, Upper Lake, Nice, Lucerne, Kono Tayee, Paradise Valley, Clearlake, Lower Lake, and Middletown. The District's wastewater service areas are divided into five (5) separate collection systems which flow to four (4) treatment plants owned and/or operated by the District, with one (1) collection system bringing wastewater to a treatment facility owned and operated by the City of Lakeport.

Sanitary Sewer System Description

The wastewater collection systems within the District's jurisdiction are Southeast Regional, Northwest Regional, Kelseyville, South Lakeport (Assessment Districts 9-1 and 9-3), and Middletown. Descriptions are as follows:

The Southeast Regional Wastewater System is the largest, and includes approximately 6,769 service connections, 93 miles of gravity sewer, 19 miles of force main, 68 miles of laterals, and serves a population of approximately 14,505 in Clear Lake and Lower Lake. Wastewater is conveyed to the Southeast Regional Wastewater Treatment Facility located about a mile north of the City of Clearlake. After treatment, the water is conveyed to the Geysers geothermal field and recycled for electricity production.

Northwest Regional, located mostly along the northwestern shores of Clear Lake, serves North Lakeport, Upper Lake, Nice, Lucerne, Kono Tayee and Paradise Valley. The system includes approximately 4,088 service connections, 69 miles of gravity sewer, 16 miles of force main, 34 miles of laterals, and supports a population of approximately 8,855. Wastewater is conveyed to the Northwest Regional Wastewater Treatment Facility at 1155 Whalen Way in Lakeport, and then to the Geysers.

The Kelseyville Wastewater Collection and Treatment System serves the town of Kelseyville, Clear Lake State Park, and, as Assessment District 9-2, the town of Corinthian Bay. Combined, the systems support a population of approximately 2,068 via 942 connections, with 9 miles of force main, 13 miles of gravity sewer, and 7 miles of laterals. Wastewater flows to the Kelseyville Wastewater Treatment Facility located at 4395 Gaddy Lane in Kelseyville where it is treated and then pumped to the evaporation / percolation ponds facility on the western slope of Mt. Konocti. The treatment facility is owned by Kelseyville County Waterworks District No. 3 and operated by the District on its behalf.

The Middletown Wastewater System (Assessment District 2-2 collection system) was constructed in 1992 and serves the downtown and surrounding residential areas of Middletown. Wastewater is conveyed to the Middletown Wastewater Treatment Plant. The system has 2.5 miles of force main, 12 miles of gravity sewer, and 12 miles of laterals, and serves a population of approximately 1,193 with 492 service connections. The tragic Valley Fire of 2015 destroyed 140 service connections from the Middletown system.

The collection systems for Assessment Districts 9-1 and 9-3, or South Lakeport Wastewater Service, convey wastewater to the Wastewater Treatment Facility owned by the City of Lakeport. The service area includes approximately 479 customers in Lands End, portions of the Big Valley Rancheria, Soda Bay Road, and South Main Street. The South Lakeport system has approximately 197 connections and includes 4.2 miles of gravity sewer, 1.4 miles of laterals, and 2.3 miles of force main which bring wastewater to a connection point with City of Lakeport's collection system.

The District's service area is particularly likely to flood during heavy rains. The drainage basin of Clear Lake contains shallow top soil and tends toward saturation after several inches of rain. Most of the District's collection systems were constructed decades ago and have experienced significant challenges with capacity and I/I and become inundated during storms and floods. They are susceptible to structural failure due to internal corrosion and embrittlement, as well as blockages from root intrusion at the joints.

5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is June 26, 2013 through June 26, 2018. This Notice also includes all violations of the CWA by the District which occur during and after this Notice period, up to and including the time of trial.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including coastal waters, lakes, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed as follows:

Jack Silver, Esq. Tel. 707-528-8175
Law Office of Jack Silver
Jerry Bernhaut, Esq. Tel. 707-595-1852
708 Gravenstein Highway N., #407
Sebastopol, CA 95472
Email: JsilverEnvironmental@gmail.com
Email: j3bernhaut@gmail.com

RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the District's staff to tailor remedial measures to the specific operation of the District's wastewater collection systems. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns.

I. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for sewer lines, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located sufficiently proximate to a surface water that if defective could allow exfiltration to that surface water. Whether a line is "sufficiently proximate" will depend upon a number of factors including age, composition and PACP rating of the sewer line in question, the nature of the defect, soil types, and groundwater patterns.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1– Minor defect.

II. REMEDIAL MEASURES

River Watch believes the following remedial measures may be necessary to bring the District into compliance with the CWA and the Basin Plan:

A. Sewer Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in the District's sewer collection systems sufficiently proximate to a surface water and determined to pose a risk of exfiltrating to that surface water, which have been CCTV'd within the past ten (10) years and were rated as Significantly Defective or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, the District will:

    i. Repair or replace all sewer lines found to be Significantly Defective;

    ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in an SSO, or, if in the District's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced. Sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the District determines the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the District shall complete such repair or replacement within two (2) years after the last CCTV cycle.

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the District shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 5 or 4 based on the PACP rating system shall be repaired or replaced within three (3) years after the rating determination.

5. Provision in the District's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. This program shall begin one (1) year following the Full Condition Assessment described above.

B. <u>SSO Reporting and Response</u>

1. Modification of the District's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

    i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered.

    ii. For Category I and II Spills, a listing of nearby residents or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

    iii. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.

2. Pursuant to the District's legal obligation under the Statewide WDR, Section D.7.v., the District shall obtain a qualified biologist to develop and implement an adequate sampling program to determine the nature and impact of all SSOs.

3. Creation of website capacity to track information regarding SSOs or, in the alternative, the creation of a link from the District's website to the CIWQS SSO Public Reports. Notification shall be given by the District to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.

4. Performance of human marker sampling on surface waters adjacent to sufficiently proximate sewer lines to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3)years;

iv. Upon replacement or repair of any part of the sewer lateral;

v. Upon issuance of a building permit with a valuation of $25,000.00 or more; or,

vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, swimming, fishing, horseback riding, hiking, photography, or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the District's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $53,484.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the District to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jerry Bernhaut

JB:eo

Service List

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